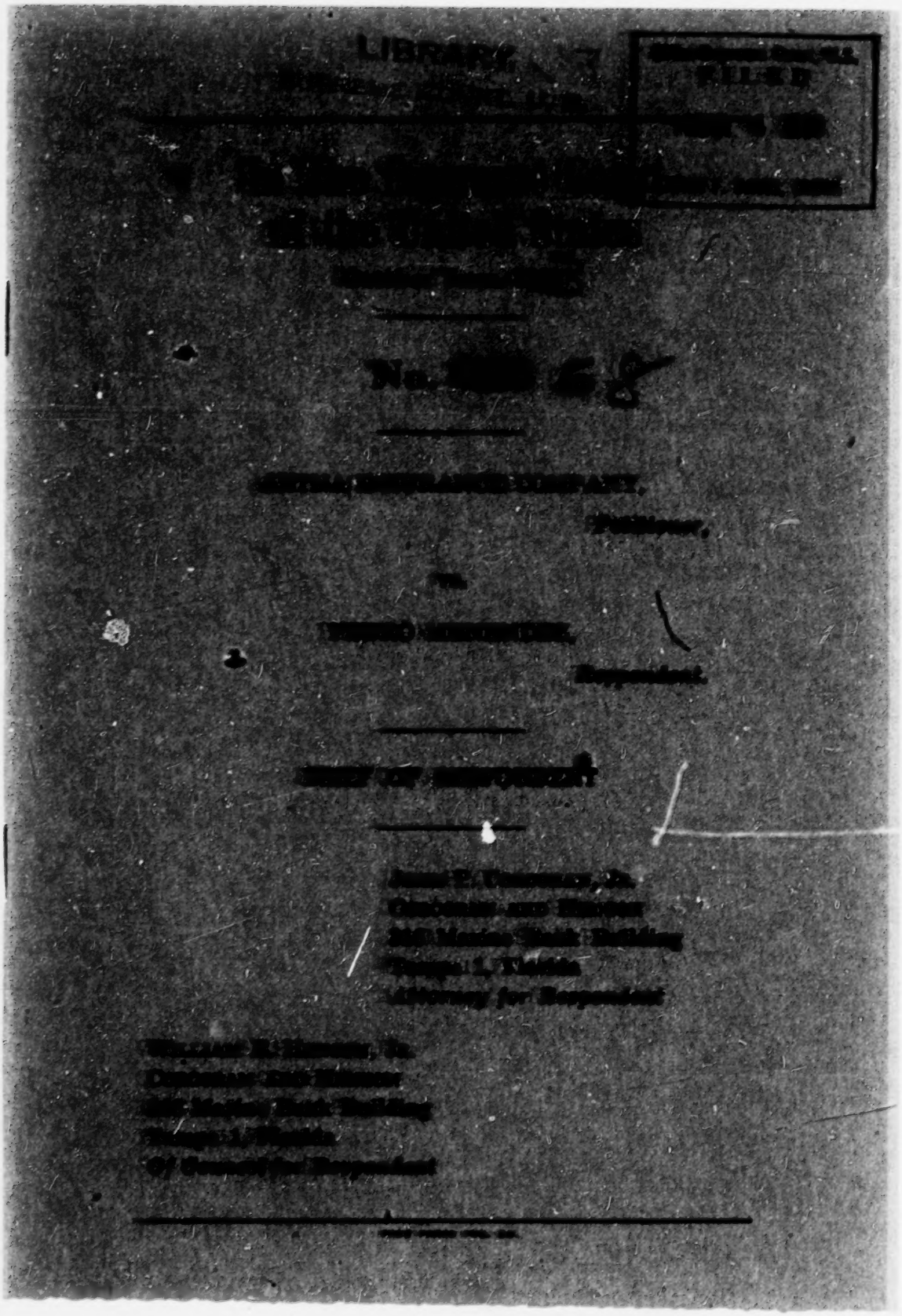

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In The Supreme Court of the United States

October Term, 1962

No. 793

AETNA INSURANCE COMPANY,

Petitioner,

vs.

PEDRO MENENDEZ,

Respondent.

BRIEF OF RESPONDENT

This Brief is filed on behalf of Respondent, Pedro Menendez, in reply to the Petition For a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit which reversed a final judgment of the District Court dismissing his Complaint on the ground of FORUM NON CONVENIENS. The District Court had ruled that in the interest of justice to Respondent (who is a refugee and would probably be executed if he returned to Cuba) his claim should be litigated in the Republic of Cuba (R. 91-92).

Two grounds are set forth for the issuance of the Writ:

1. The decision of the Court of Appeals which relates to the doctrine of Forum Non Conveniens is in conflict with applicable decisions of this court and other courts of appeal on the same matter.

2. The decision of the Court of Appeals which relates to the Act of State doctrine is in conflict with a number of decisions of this court and other courts of appeal on the same matter.

As to the first ground, an analysis of the facts shows no conflict with any other decisions of this court or other courts of appeal on the same question, but, on the contrary, the decision follows the decisions of this court.

As to the second ground, no determination or ruling was made by the District Court in its final judgment (R. 91-92) either for or against Respondent on the application of the Act of State Doctrine and Cuban decrees to the facts. There was no hearing on the merits.

The sole ground for dismissal of the complaint in the District Court was the application of the doctrine of Forum Non Conveniens.

The decision of the Court of Appeals in the companion case, *Rodriguez, et al vs. Pan American Life Insurance Company,* (C.C.A. 5th 1962) 311 F. 2d 429, specifically pointed this out at P. 434.

> " . . . Although not specifically mentioned in the District Court's findings upon which its dismissal orders were based, running through each record is the contention of appellees that the merits of

> appellants' respective claims for one reason or another, are controlled by the law of Cuba. In each case it is urged that the confiscatory and other decrees of the Castro government are binding, that appellants' rights, if any, have been expropriated by Castro; that they have no standing in court as proper parties; . . . "

The Court of Appeals in its decision recognized that the question had not been passed on by the District Court and was not the proper subject matter of review, stating at page 436.

> " . . . Our courts are not compelled by the Act of State doctrine to give force and effect to the decrees of the Castro government in Cuba. On the merits it was determined in *Banco* that the subject Cuban decrees were confiscatory and their effect was nullified by the trial court, which was affirmed on appeal.
>
> "It is for the District Court to determine upon development of all the facts, by summary judgment or otherwise, whether the Cuban decrees are confiscatory or whether the particular decrees are otherwise violative of fundamental concepts of justice and, therefore, without status, in these particular cases."

The Court of Appeals recognized and pointed out the obvious factual distinction between the present case and the case of *Banco Nacional de Cuba v. Sabbatino,* (C.C.A., 2d 1962) 307 F. 2d. 845.

The decision of the United States Court of Appeals on the Act of State doctrine as applied to the facts of the present case not only is not in conflict with applicable decisions of this court but the decision was in conformity therewith.

STATEMENT OF THE CASE

Respondent, Menendez, filed his Complaint against Aetna Insurance Company (hereinafter referred to as Aetna) in the Circuit Court for Hillsborough County, Florida to recover on a fire loss occurring in Cuba which had been insured by Aetna. The complaint alleged that Menendez was a resident of Hillsborough County and Aetna was authorized to do business in Florida. In consideration of the premium of $4,852.55, defendant under Open Policy No. 55214 issued to the Cuban Land and Leaf Tobacco Company, insured barns and contents of barns on farms owned by the plaintiff located in the Province of Pinar Del Rio in Cuba against loss by fire in the total amount of $241,400.00. He never received the Open Policy but the renewal receipt and English translation were attached as Ex. A and B (R. 7-9). On November 20, 1958, eleven barns and contents located on the farm Pancho Perez and one barn and contents on the farm Quemado Del Rubi were destroyed by fire. Defendant agreed to pay the loss but has refused to do so. The Complaint prayed for judgment together with interest and attorneys' fees.

Aetna removed the action from the state court to the U.S. District Court on the ground of diversity of citizenship stating that the U.S. District Court had jurisdiction and then filed its Motion (R. 9-10) that the Court should decline to take jurisdiction on the ground that Menendez was a citizen of Cuba and should have the relief afforded under the laws of the Republic of Cuba, and to require it to defend the suit in Tampa, Florida, would impose on Aetna great and unnecessary inconvenience and expenses (Aetna had previously advised Menendez by letter dated October 22, 1959 to seek the aid of a Court of competent jurisdiction to obtain

his insurance proceeds) (R. 44-45). Aetna also filed Answer and Amendment to Answer (R. 11-35) pointing out that the action was justiciable solely under the laws of the Republic of Cuba. The answer also stated Menendez properties had been confiscated in Cuba by Decree (made long after he had become a resident of Hillsborough County, Florida).

The Court denied the Motion of Menendez to remand the cause to the State Court and entered an Order continuing the case for submission of proof on the question of Forum Non Conveniens (R. 36).

PROOF FILED BY MENENDEZ

Menendez filed an Affidavit (R. 50-63) and Request for Admissions were propounded to Aetna (R. 46-47) and Answered by Aetna (R. 48-49). The Affidavit of Menendez set forth the following facts:

He has been a resident of Hillsborough County, Florida, since January, 1959. Prior to becoming a resident of Florida he was a tobacco grower and farmer in the Province of Pinar Del Rio for more than twenty years. He had sold his tobacco crop each year to the American Tobacco Company, an American company with offices in New York City, New York for more than 15 years. The actual purchase was made through a wholly owned subsidiary, another American company, the Cuban Land & Leaf Tobacco Company. In connection with the purchase of his tobacco, the American Tobacco Company, through its subsidiary corporation, would from time to time advance money for fertilizer and other horticultural expenses each year to various farmers. In connection with its services to tobacco growers and farmers in Cuba, the Cuban Land & Leaf

Tobacco Company in New York, entered into an insuring agreement with Aetna Insurance Company in New York providing that the Cuban Land & Leaf Tobacco Company could obtain fire insurance for tobacco farmers growing crops for it in Cuba. The contract between the Aetna Insurance Company and the Cuban Land & Leaf Tobacco Company was entitled Open Policy No. 55214. This contract was negotiated in New York, through Despard & Company, Inc., Insurance Brokers. The insurance company has refused to permit him to see the original contract between Aetna Insurance Company and the Cuban Land and Leaf Tobacco Company.

Sometime in January, 1952, the Cuban Land & Leaf Tobacco Company, an American Company, obtained insurance for him from Aetna Insurance Company insuring the contents of tobacco in barns owned by the plaintiff known as Pancho Perez and Quemado Del Rubi and others located in the San Juan y Martinez of the Province of Pinar Del Rio, Cuba. This policy was renewed annually, the last renewal being for the period from January 29, 1958 to January 29, 1959. The photostatic copy of the renewal receipt showing payment of the premium in the amount of $4852.55 and the valuation of $241,400.00 fixed against loss by fire is attached to the Complaint as Exhibit A and the English translation is attached to the Complaint as Exhibit B. (R. 7-9).

Upon prior occasions, upon the occurrence of a loss, the name Cuban Land & Leaf Tobacco Company as insured under the Open Policy would appear on the Proof of Loss which was filed for his account. For example, in connection with the loss occurring on March 27, 1957, copy of the Proof of Loss, together with extract of the policy form is attached to his affidavit as Exhibit No. 1 (R. 61-62). The firm of Parajon e Hijo was

employed by the Aetna Insurance Company to assess and make an appraisal of the fire loss and the Aetna Insurance Company would then pay the loss based upon the assessment made by its appraiser and assessor, Parajon e Hijo. A statement of Parajon e Hijo is attached as Schedule No. 2 to the Proof of Loss as Exhibit 1. (R. 61-62)

On or about November 20, 1958, eleven barns and contents consisting of tobacco located on the farm Pancho Perez and one barn and contents on the farm Quemado Del Rubi, all covered by the policy against fire loss, burned and were destroyed by fire. The loss was reported to the Aetna Insurance Company in Havana, Cuba, on or about December 21, 1958. On each previous loss which resulted in a claim under the policy, the Cuban Land & Leaf Tobacco Company and Aetna Insurance Company would be notified of the loss. Aetna Insurance Company would employ Parajon e Hijo as their adjusters and assessors to value and appraise the extent of the loss in the same manner as set forth in the statement of loss signed by Parajon e Hijo, attached to the affidavit as Page 3 of Exhibit No. 1. Based on the appraisal by Aetna's Insurance adjusters, the loss would be paid by Aetna Insurance Company and all of the documents in connection with Proof of Loss, Receipts and Releases were prepared by the Aetna Insurance Company.

On or about December 21, 1958, Plaintiff executed Receipts and Releases in connection with a loss occurring prior to the loss in question and was given a draft in payment of the loss by the Aetna Insurance Company. He was assured that the same procedure would be followed in this case, that Aetna Insurance

Company would have Parajon e Hijo appraise and assess the amount of the fire loss and pay his claim. Thereafter, Parajon e Hijo employed by the Aetna Insurance Company adjusted and appraised the fire loss in the amount of $60,592.10 but Aetna Insurance Company has refused and continues to refuse to pay him the amount which its own employees and adjusters determined as the amount of the loss. A photostatic copy of the adjustment of loss by Parajon e Hijo is attached to plaintiff's affidavit as Exhibit No. 2. (R. 63-64).

Plaintiff is more than seventy years of age and has been growing tobacco as a tobacco farmer in the Province of Pinar Del Rio, Cuba for more than forty years. He was induced by the people of the Province of Pinar Del Rio to run for the Senate in Cuba, was elected and served in that capacity during the year 1958.

In January, 1959, before Aetna Insurance Company had paid its debt to him, arising from the fire loss which is the subject matter of this action, the regime of Fidel Castro, a Communist Revolutionary, came into power and he was forced to flee for his life. One of the first acts of the Revolutionary Government was an abandonment of the 1940 Constitution and substitution in its place of the so-called Fundamental Law of February 7, 1959. On April 7, 1959 by the mere publication of his name in the list published in the official Gazette of April 7, 1959, along with other names, his property in Cuba was declared confiscated. Your plaintiff acquired all of the properties owned by him by purchasing same for full consideration. All of the properties including the subject matter of the litigation were acquired by him honestly and as a result of diligent

work and his ability as a tobacco farmer over the past forty years. None of them were acquired in any fraudulent or dishonest manner. He ran for the Senate in order to better serve the people of the Province of Pinar Del Rio and without any desire for personal gain. The confiscation of his properties was completely without justification. He has no recourse to any judicial tribunals in the Republic of Cuba. Under the regime of Fidel Castro all constitutional guarantees and the independence of the judiciary have been destroyed. Civil rights in Cuba for all practical purposes have been abolished. There is no longer any constitutional government or independent judicial system in Cuba to which he could apply for relief.

After establishing residence in Hillsborough County, Florida, in January, 1959, he employed an attorney in Tampa to write Despard & Company, Inc., the brokers who negotiated the insurance agreement in New York with reference to obtaining payment of his fire loss.

On October 22, 1959 his attorney received a letter from Aetna (R. 44-45) advising that, after he had established residence in Florida, his properties had been confiscated on April 7, 1959 and an interventor on behalf of the Cuban Government had been authorized to collect the insurance proceeds. Aetna advised in the letter that it would be impossible to make disposition of the funds due Senator Menendez "under the captioned policies until authorized to do so by a Court of competent jurisdiction." (R. 44-45). In said letter Aetna invited the filing of an action to determine whether the Cuban government was entitled to proceeds or Menendez. Thereafter, his attorney wrote Aetna whether Aetna was taking the position it was merely a stakeholder.

(R. 45-46). Aetna replied (R. 46) that if Menendez held the properties fraudulently he had no insurable interest and Aetna was not a stakeholder. Aetna completely abandoned this position taken in its letter in its answer to the complaint (R. 11-32). The affidavit of Menendez further set forth that the principal issue in the cause is whether the Cuban Government may confiscate the claim of a resident of Florida against an American company doing business in Florida by decree made long after he had become a resident of Florida.

In Answers to Request for Admissions, (R. 36-48) Aetna admitted the existence of the insuring agreement, the fact that the fire was reported by Menendez to Aetna through its agent in Havana on December 21, 1958 and the letters of Aetna of October 22, 1959 (R. 45-46) inviting Menendez to file the action in a Court of competent jurisdiction for said funds and its refusal to file an interpleader action in its letter of November 2, 1959 (R. 46).

The only proof in support of its position offered by Aetna was the affidavit of its Tampa attorney of record (R. 65-90) stating that in 1952 Aetna had issued a policy of fire insurance to the Cuban Land and Leaf Tobacco Company for the account of Menendez which was continued until December 10, 1958. The policy was amended in July 1957 to change the name of the insured from Cuban Land and Leaf Tobacco Company for Pedro Menendez to Pedro Menendez directly. After the Republic of Cuba confiscated Menendez's property in April, 1959, the government required Aetna's insurance adjusters, Parajon e Hijo to ascertain the amount of loss and to execute a proof of loss in October, 1959 which was the amount of $60,592.10 (R. 89). The Republic

of Cuba applied bonds deposited by Aetna with it in the amount of $60,592.10 in payment of the loss of November 20, 1958.

The affidavit of Aetna failed to show the necessity for any witnesses from Cuba much less any hardship involved in litigating the matter in Florida. The fact of insurance coverage, the fact of the fire loss, and the amount of the fire loss of $60,592.10 have all been ascertained and fixed. The amount of the fire loss was even ascertained by Aetna's own adjusters, Parajon e Hijo.

The District Court entered a Final Judgment (R. 91) dismissing the cause on the ground that for the convenience of the parties (Menendez would be executed if he returned to Cuba) and the witnesses and in the interest of justice, Menendez's claim could best be litigated in Cuba and the cause should be dismissed on the ground of Forum Non Conveniens.

The judgment of the District Court was reversed by the Court of Appeals. The Court of Appeals in a Per Curiam decision reversed for the reasons stated in its opinion in the case of *Rodriguez et al vs. Pan American Life Insurance Company* (C.C.A. 5th 1962) 311 F. 2d 429, decided the same day and which is the subject matter of a similar petition for writ of certiorari before this court in the case of *Pan American Life Insurance Company vs. Rodriguez, Docket No.* 792. The petition in that case presents the same questions as the present case.

QUESTIONS PRESENTED

The following questions were presented by the Petition for Writ of Certiorari in this case.

1. Does the decision of the Court of Appeals reversing the lower court's holding that respondent, resident of Florida, may properly litigate his claim against Aetna on the merits in the Florida Courts without being relegated to Cuba where he could not get a trial, much less a fair trial, conflict with any applicable decision of this court or decisions of other Courts of Appeal on the same matter.

2. Does the decision of the Court of Appeals holding that our courts are not compelled by the Act of State Doctrine to give force and effect to the confiscatory decrees of Castro's government in Cuba and referring the case to the District Court for determination of the facts and to determine the applicability of decrees of Castro's Cuba to the facts as developed, conflict with any applicable decision of this Court or decisions of other Courts of Appeal on the same matter.

ARGUMENT

POINT I.

THERE ARE NO DECISIONS OF THIS COURT OR OTHER COURTS OF APPEAL APPLYING THE DOCTRINE OF FORUM NON CONVENIENS TO FORCE A RESIDENT SUING IN HIS OWN RIGHT TO BE DEPORTED TO A FOREIGN COUNTRY WHERE ALL VESTIGES OF CONSTITUTIONAL GOVERNMENT, AND RIGHT TO FAIR TRIAL HAVE BEEN DESTROYED, WHERE HE WOULD PROBABLY BE EXECUTED AND WHERE MENENDEZ'S PROPERTY IS THE SUBJECT OF A CONFISCATION DECREE MADE AFTER HE BECAME A FLORIDA RESIDENT.

In January 1959, Menendez became a resident of Florida. He requested Aetna to pay the claim arising from his fire loss. By letter dated October 22, 1959, Aetna advised the attorney for Menendez in Tampa, Florida, that a representative of the Cuban government was also claiming the insurance proceeds (R. 44-45). The letter of Aetna admitting the obligation to pay the insurance proceeds concluded (R. 45):

> "Under these circumstances, we regret to advise you that it will be impossible for us to make any disposition of whatever funds may be due Senator Menendez under the captioned policies until authorized to do so by a court of competent jurisdiction."

Pursuant to the invitation of Aetna, Menendez filed his action in a state court at his place of residence to determine his entitlement to the insurance proceeds. The only issue presented by Aetna was: who was entitled to the funds, Pedro Menendez or the representative of the Cuban government?

There is no hardship, inconvenience or any reason why Aetna should not litigate the cause in Florida. The existence of the policy covering the fire loss suffered by Menendez, and the fact that it was originally negotiated by the Cuban Land & Leaf Tobacco Company in New York for the account of Menendez are admitted. The amount of the fire loss determined by Parapon e Hijo, Aetna's own adjusters is fixed at $60,592.10. (Affidavit of Gillen, R. 67) (Ex. No. 2, Menendez Affidavit, R. 63-64). The affidavit (R. 65-68) of Aetna failed to show the necessity for any witnesses from Cuba or the necessity of establishing any fact from Cuba much less any hardship in litigating the matter in Florida. After inviting Menendez, a Florida resident since January, 1959, to file action for the collection of his insurance proceeds, Aetna claimed that the controversy should be litigated in Cuba. If Aetna had adjusted the loss promptly and paid the amount due Menendez this controversy would not have occurred. After delaying several months in payment of a just claim, Aetna now says it should not pay its policy holder at all, and Menendez should be required to go to Cuba where he would in all probability be executed.

The doctrine of Forum Non Conveniens has never been applied in a civil case to force a resident suing in his own right to be deported to a foreign country, much less a foreign country where right of fair trial, constitutional government, and an independent judiciary have been destroyed. Petitioner has failed to cite a single decided authority supporting this proposition. The decision of the Court of Appeals in applying the equitable principles underlying the doctrine of Forum Non Conveniens, namely, that there be at least two forums

open to the plaintiff and that the alternative forum shall be one where the plaintiff can obtain justice, followed the doctrines expressed in the decided cases both civil and admiralty.

As was stated in the leading case, *Gulf Oil Company v. Gilbert*, 330 U.S. 501, 91 L. Ed. 1055, 67 S. Ct. 839, at page 508:

> "The Court will weigh relative advantages and obstacles to fair trial."

In the absence of strong equities in favor of a defendant, the plaintiff's choice of forum should rarely be disturbed. The requirement that two forums be open to plaintiff before the rule is applied would be illusory if the second forum were in substance no forum at all, if the second forum did not provide for a fair trial, much less a forum where the plaintiff would probably be executed if he attempted to present his case. It is general knowledge that a fair trial cannot be obtained in Cuba.

Under the doctrine of the decided cases, both civil and admiralty, the plaintiff's choice of forum is rarely disturbed. Only when justice would be served by declining jurisdiction is the doctrine applied. The doctrine of Forum Non Conveniens is never applied as an instrument of injustice. It has never been applied to deprive a plaintiff of all relief.

The civil and admiralty cases decline jurisdiction only when equitable considerations require that plaintiff be relegated to another forum. The doctrine presupposes at least two forums. *Tivoli Realty Inc. v. Interstate Circuit Inc.*, 167 F. 2d 155; *The Belgenland*,

(1885) 114 U.S. 355; *Motor Distributors, Ltd. c. Olaf Pedersen's Rederi A/S*, (5th Cir. 1956) 239 F. 2d 463; *North Branch Products, Inc. v. Fischer* (D.C. Cir. 1960) 284 F. 2d 611, *cert. den.*, 365 U.S. 827; *Burt v. Isthmus Development Company*, (C.C.A. 5th 1955) 218 F. 2d 353; *The Wilga*, (C.C.A. 2d) 113 F. 2d 646.

Under the provisions of Title 42, Section 1981, United States Code, the respondent, policy holder, residing in Florida was entitled to enforce his contractual rights in the same manner as other citizens. To deny him access to the Courts of the United States would render this statute nugatory.

In cases under similar circumstances, the Courts of the State of Florida have refused to dismiss actions brought under similar circumstances on the grounds urged by Aetna herein. The authorities are *Confederation of Canada Life Insurance Company v. Arminam* (Fla. 1962) 135 So. 2d 867, certiorari denied by Florida Supreme Court, 144 So. 2d 809, and *Crown Life Insurance Co. v. Garay* (Fla. 1962) 141 So. 2d 633, certiorari denied by Florida Supreme Court, 143 So. 2d 492.

Aetna cannot by the device of removal to the United States District Court deprive its policy holder of his rights.

POINT II.

THERE ARE NO DECISIONS OF THIS COURT OR OTHER COURTS OF APPEAL HOLDING THAT OUR COURTS ARE BOUND BY THE ACT OF STATE DOCTRINE TO GIVE FORCE AND EFFECT TO THE DECREES OF THE CASTRO GOVERNMENT IN CUBA MADE AFTER MENENDEZ BECAME A RESIDEDENT OF FLORIDA AS TO A DEBT WITH A SITUS IN THE UNITED STATES.

In January 1959 Menendez became a resident of Hillsborough County, Florida. While a resident of the United States, the Cuban Castro government purported to arbitrarily confiscate his property by publishing his name in an Official Gazette on April 7, 1959, long after he had become a resident of the United States. Menendez had been a tobacco farmer for more than forty years and had acquired his property honestly and through hard work.

The arbitrary decree of the Cuban government made in April, 1959, long after he had resided in Florida, could not affect the debt owed to him in Florida by an American company qualified to do business in Florida. To require Plaintiff to litigate in Cuba would be in substance granting the arbitrary confiscatory decree in Cuba extraterritorial effect beyond the Republic of Cuba.

The right of a Florida resident to collect the cash surrender value of his policy from an American company doing business in Florida obviously could not have any situs in Cuba. See *Chicago R.I. & P.R. Co. v. Sturm*, 174 U. S. 710, 43 L. Ed. 1144, 19 S. Ct. 797.

Contrary to the representation in the petition, the contract right of a Florida resident against an American company doing business in Florida could obviously have no situs in Cuba.

The protection of Title 42 Section 1981, United States Code, extends to all persons within the jurisdiction of the United States giving them full and equal benefit of all laws and proceedings for the security of persons and property, including the right to enforce their contracts.

The issue in connection with the Act of State Doctrine presented in the Petition for Writ of Certiorari was never decided by the United States District Judge in his decision nor was it decided by the Court of Appeals in its decision. The Court of Appeals in the companion case, *Rodriguez v. Pan American Life Insurance Company,* (C.C.A. 5th 1962) 311 F. 2d 429, pointed out that the appellee in that case, raised the point that the decrees of the Castro Government were binding either as an adjunct of the Forum Non Conveniens doctrine or as a separate proposition asserted in the name of the Act of State Doctrine. The Court further pointed out that it was for the District Court to determine upon development of all the facts, by summary judgment or otherwise, whether the Cuban decrees are confiscatory or whether the particular decrees are otherwise violative of the fundamental concepts of justice and therefore without status in these particular cases.

The Court of Appeals in its decision admitted that there were factual distinctions between that case and the case of *Banco Nacional de Cuba v. Sabbatino,* (C.C.A. 2d, 1962) 307 F. 2d 845. The decision of the Court of Appeals merely referred the cause back to the District Court for further determination of the facts inasmuch as the Cuban decrees had never been ruled upon or admitted into evidence.

However, upon the facts presented in this case, a debt owed a Florida resident by a company authorized to do business in Florida, no confiscatory decree of the Republic of Cuba, made after respondent was a resident of Florida, would be given extra-territorial effect. This court has clearly held that foreign acts of confiscation will not be given extra-territorial effect beyond the

jurisdiction of the foreign sovereign. *Baglin v. Cusenier Co.*, 221 U. S. 580, 31 S. Ct. 669, 55 L. Ed. 863; *Ingenohl v. Walter E. Olsen & Co.*, 273 U. S. 541, 47 S. Ct. 451, 71 L. Ed. 762.

There is no distinction between the position of the Carthusian Monks who were attempting to protect their property rights in the United States from a confiscatory decree in France in *Baglin v. Cusenier Co., supra,* and the case of Menendez attempting to collect the debt owed him by an American company.

The most recent holding on the refusal to give extra-territorial effect to a decree of confiscation is *Zwack v. Kraus & Co.* (C.C.A. 2d 1956) 237 F. 2d 255 in which a decree of confiscation by the Hungarian Government was denied effect as to assets having a situs in the United States. The court stated at page 259;

> "It is clear that the Hungarian government could not directly seize the assets which have a situs in the state of the forum. To allow it to do so indirectly through confiscation of firm ownership would be to give its decree extra-territorial effect and thereby emasculate the public policy of the forum against confiscation."

CONCLUSION

The decision of the Court of Appeals being in conformity with and not in conflict with decisions of this Court or other courts of appeal, as applied to the factual situation presented, it is respectfully submitted that the petition for writ of certiorari should be denied.

Dated at Tampa, Florida this —— day of March, 1963.

Respectfully submitted,

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